## REMARKS

Claims 1 and 3-10 are pending in this application, and under consideration. Reconsideration is requested based on the following remarks.

**Response to Arguments:**

The Applicants appreciate the consideration given to their arguments. The final Office Action asserts in section 7, at page 6, that:

> Starting from paragraph 0020, Khakoo teaches that the presence database maintains information for each user which indicates whether or not a user is present at a certain device. Following to the next paragraph, Khakoo states that the presence is update based on a detection of the "manual registration by the user". Hence when the user manually registers with e.g. the instant messaging service then the user is selectively activating the presence at the device and thus the presence database will reflect this information as taught in paragraph 0020.

The fifth clauses of claims 1, 9, and 10, however, recite the *availability* status, not simply the *presence* of the user. Thus, even if, as asserted in the final Office Action, the user is selectively activating their *presence* at the device when the user manually registers with the instant messaging service, that still would not amount to "wherein the availability status is selectable for activation by the predetermined recipient of the call and/or message," as recited in claims 1, 9, and 10. The *presence* of the user and the *availability* of the user, rather, are independent of one another.

Paragraph [0021] of Khakoo, in any case, *only* describes the instant message delivery server 100 updating the *presence* and device address entries of the user when the user registers, i.e. signs on, manually. The availability status is still not selectable by the user in Khakoo, let alone "selectable for activation by the predetermined recipient of the calling and/or message." The availability of the user to receive instant messages in Khakoo, rather, is determined completely by the user's presence on the instant message delivery server 100, not by any selection on the part of the user. In Khakoo, if the user is determined to be present, then the user is available. In particular, as described at paragraph [0021]:

> Thus, the instant message delivery server 100 is always able to determine whether a user is available.

Furthermore, the manual registration process in Khakoo only allows a user to *prioritize* the indicated device and presence information, thereby allowing instant messages to be delivered in accordance with the user's *preferences*, not select an availability status. In particular, as described further at paragraph [0021]:

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In addition, the manual registration process allows a user to prioritize the indicated device and presence information, thereby allowing instant messages to be delivered in accordance with the user's preferences.

Finally, the "user's preferences," in Khakoo pertain to the *language* into which the message is translated for delivery to the user, not the *availability status* of the user. In particular, as described in paragraph [0018]:

> In a further variation, the instant message delivery server 100 can perform language translation to automatically synthesize the text message in a human language preferred by the user.

Also, in Khakoo, the preferences of the user are specified as a weighted list of media types and human languages, not the availability status of the user. In particular, as described in paragraph [0028]:

> Moreover, SIP allows each SIP device or endpoint to specify the preferences of its user as a weighted list of media types and human languages. Senders are asked to provide, from the media types and human languages that they have available, the most highly weighted media type and human language.

Thus, even if, as asserted in the final Office Action, the user is considered to be selectively activating their presence at the device when the user manually registers with the instant messaging service, that still would not amount to "wherein the availability status is selectable for activation by the predetermined recipient of the call and/or message," as recited in claims 1, 9, and 10. Further reconsideration is thus requested.

**Claim Rejections - 35 U.S.C. § 102:**

Claims 1 and 3-10 were rejected under 35 U.S.C. § 102(e) as anticipated by US Patent Application Publication No. 2003/0135569 to Khakoo et al. (hereinafter "Khakoo"). The rejection is traversed. Reconsideration of the rejection is earnestly solicited.

The fifth clause of claim 1 recites:

> Wherein the availability status is selectable for activation by the predetermined recipient of the call and/or message.

Khakoo neither teaches, discloses, nor suggests, "wherein the availability status is selectable for activation by the predetermined recipient of the call and/or message," as recited in claim 1. In Khakoo, rather, the *presence database 200* maintains information for each user in the community, including the availability of each user to receive instant messages. There is no evidence in Khakoo that *users* have any control over the information maintained in the presence database 200 at all. In particular, as described in paragraph [0020]:

As indicated above, the presence database 200 maintains information for each user in the community, including the availability of each user to receive instant messages. As shown in FIG. 2, the presence database 200 includes a plurality of records, such as record 210, each associated with a different user.

Since, in Khakoo, the presence database 200 maintains information for each user in the community, including the availability of each user to receive instant messages, the availability status in Khakoo is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in claim 1.

In addition, in Khakoo, the *presence database 200* indicates the user's presence in field 240. There is no evidence in Khakoo that *users* have any control over whether their presence is indicated or not. In particular, as described further in paragraph [0020]:

> For each user, identified, for example, by name in field 230, the presence database 200 indicates the user's presence in field 240, corresponding device address and capabilities in fields 250 and 260, respectively, and the user's voice mailbox in field 270.

Since, in Khakoo, the presence database 200 indicates the user's presence in field 240, the availability status in Khakoo is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in claim 1.

Furthermore, in Khakoo, the *presence entry in field 240* indicates whether the user is present at a given device registered for the user. There is no evidence in Khakoo that *users* have any control over whether their presence is indicated in the presence entry in field 240 or not. In particular, as described further in paragraph [0020]:

> The presence entry in field 240 indicates whether the user is present at a given device registered for the user. The device address in field 250 indicates the address of each device that is available for receiving instant messages for the user. The address can be any location or connection means, such as a phone number or URL, for example. The device capability in field 260 indicates the capability of the device, such as whether the device is text or voice or video capable (or some combination of the foregoing), including email and fax capable devices. Finally, the voice mailbox in field 270 indicates the address of the voice mailbox for the user.

Since, in Khakoo, the presence entry in field 240 indicates whether the user is present at a given device registered for the user, the availability status in Khakoo is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in claim 1.

Furthermore, in Khakoo, the instant message delivery server 100 performs a *test* during step 310 to determine if the recipient is available. The fact that the instant message delivery server 100 has to perform a test to determine if the recipient is available militates against the

availability status in Khakoo being "selectable for activation by the predetermined recipient of the call and/or message," as recited in claim 1. In particular, as described in paragraph [0022]:

> The instant message delivery server 100 performs a test during step 310 to determine if the recipient is available.

Since, in Khakoo, the instant message delivery server 100 performs a test during step 310 to determine if the recipient is available, the availability status in Khakoo is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in claim 1. Claim 1 is thus submitted to be allowable. Withdrawal of the rejection of claim 1 is earnestly solicited.

Claims 3-8 depend from claim 1 and add further distinguishing elements. Claims 3-8 are thus also submitted to be allowable. Withdrawal of the rejection of claims 3-8 is also earnestly solicited.

Claim 9:

> The fifth clause of claim 9 recites:

> Wherein the availability status is selectable for activation by the predetermined recipient of the call and/or message.

Khakoo neither teaches, discloses, nor suggests, "wherein the availability status is selectable for activation by the predetermined recipient of the call and/or message," as discussed above with respect to the rejection of claim 1. Claim 9 is thus also submitted to be allowable for at least those reasons discussed above with respect to the rejection of claim 1. Withdrawal of the rejection of claim 9 is earnestly solicited.

Claim 10:

> The fifth clause of claim 10 recites:

> Wherein the availability status is selectable for activation by the predetermined recipient of the call and/or message.

Khakoo neither teaches, discloses, nor suggests, "wherein the availability status is selectable for activation by the predetermined recipient of the call and/or message," as discussed above with respect to the rejection of claim 1. Claim 10 is thus also submitted to be allowable for at least those reasons discussed above with respect to the rejection of claim 1. Withdrawal of the rejection of claim 10 is earnestly solicited.

**Claim Rejections - 35 U.S.C. § 103:**

Claims 5 and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Khakoo in view of U.S. Patent Publication No. 2003/0076941 to Tiliks et al. (hereinafter "Tiliks"). The rejection is traversed to the extent it would apply to the claims as amended. Reconsideration is earnestly solicited.

Claims 5 and 8 depend from claim 1 and add further distinguishing elements. Khakoo neither teaches, discloses, nor suggests, "wherein the availability status is selectable for activation by the predetermined recipient of the call and/or message," as discussed above with respect to the rejection of claim 1. Tiliks does not either, and thus cannot make up for the deficiencies of Khakoo with respect to claims 5 and 8.

In Tiliks, rather, calls are connected if the telephone number from which they originate matches no number on a restricted list. In particular, as described in paragraph [0056]:

> When the outside telephone number does not match the at least one restricted telephone number, the call is connected between the subscriber telephone number and the outside telephone number. When the outside telephone number matches the at least one restricted telephone number, the call data is stored and entry of the personal identification number is requested.

Since, in Tiliks, calls are connected if the telephone number from which they originate matches no number on a restricted list, the availability status in Tiliks is not "selectable for activation by the predetermined recipient of the call and/or message," as recited in claim 1.

All that matters in Tiliks, if the telephone number is restricted, is whether the recipient *has* the personal identification number, not the availability of a predetermined recipient. The recipient may be all ready and waiting to receive the call, i.e. he may be more than available. If he can't produce the PIN, however, he doesn't get to talk. This is to be contrasted with claim 1, which recites, "wherein the availability status is selectable for activation by the predetermined recipient of the call and/or message." Claims 5 and 8 are thus also submitted to be allowable. Withdrawal of the rejection of claims 5 and 8 is also earnestly solicited.

**Conclusion:**

Accordingly, in view of the reasons given above, it is submitted that all claims 1 and 3-10 are allowable over the cited references. There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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Date: _07F007_

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